

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION**

KIRK RODRICK SMITH
REG. #43293-004

PETITIONER

VS.

2:07CV00064 SWW/JTR

THOMAS A. WARD, ET AL.

RESPONDENTS

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Susan Webber Wright. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the United States District Judge, you must, at the same time that you file your written objections, include a "Statement of Necessity" that sets forth the following:

1. Why the record made before the Magistrate Judge is inadequate.

2. Why the evidence to be proffered at the requested hearing before the United States District Judge was not offered at the hearing before the Magistrate Judge.
3. An offer of proof setting forth the details of any testimony or other evidence (including copies of any documents) desired to be introduced at the requested hearing before the United States District Judge.

From this submission, the United States District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
500 West Capitol Avenue, Room 149-A
Little Rock, AR 72201-3325

I. Background

Pending before the Court is the Respondents’ Motion to Dismiss this § 2241 habeas action on the grounds that Petitioner’s requested relief is moot. (Docket entry #14.) Although ordered to do so, Petitioner has not filed a Response to Respondents’ Motion, and the time for doing so has expired. (Docket entry #15.) Thus, the issues are joined and ready for disposition.

Before addressing Respondents’ Motion, the Court will briefly review the relevant procedural history. On April 17, 1995, the United States District Court for the Southern District of Florida sentenced Petitioner to 110 months’ imprisonment in the Bureau of Prisons (“BOP”) based on his convictions for conspiracy to possess and transfer unregistered firearms, possession of unregistered firearms, and transfer of a firearm without approval. *United States v. Smith*, S.D. Fla. No. 1:94CR00272(2) UU at docket entry #77. On April 30, 1998, Petitioner received a 180-month sentence, to run concurrent with his prior sentence, based on a conviction for possession of a firearm by a convicted felon (a count severed from the original indictment). *United States v. Smith*, S.D.

Fla. No. 1:94CR00272(2) UU. at docket entry #166.

On December 26, 2006, Petitioner initiated this habeas action in the Southern District of Florida. *Smith v. Ward, et al.*, S.D. Fla. No. 1:06CV23063-SH at docket entry #1.¹ By way of relief, Petitioner argued that he was entitled to an early release to a half-way house in December 2006. According to Petitioner, Respondents deprived him of his “liberty interest” in early release to a half-way house based on an improper INS detainer that should have been removed.

On May 3, 2007, the Southern District of Florida transferred this action to the Eastern District of Arkansas because Petitioner was serving his sentence in FCI Forrest City. On May 14, 2007, the case was docketed with the Court. (Docket entries #1- #4.) Because Petitioner did not pay the filing fee or seek *in forma pauperis* status in the original Florida action, the Court gave Petitioner until June 15, 2007, to take either action in order to proceed. (Docket entry #6.) Petitioner subsequently paid the filing fee. (Docket entry #9.)

On July 17, 2007, Respondents filed their Motion to Dismiss, arguing that Petitioner’s requested relief is moot because he completed his federal sentence.² (Docket entry #14.) For the reasons discussed below, the Court agrees that Respondents’ Motion has merit, and recommends that the case be dismissed.

II. Discussion

According to a BOP affidavit attached to Respondents’ Motion, Petitioner completed service of his federal sentence on June 7, 2007, and was transferred to INS custody at FCI Oakdale pursuant to his INS detainer. Additionally, in a status report filed on July 24, 2007, Respondents submitted

¹Petitioner filed a habeas Petition, an “Emergency Writ of Mandamus,” an “Emergency Motion For Preliminary Injunction,” and a Motion for Expedited Disposition.

²On July 19, 2007, the Court ordered Petitioner to file a Response to the Motion to Dismiss, which Petitioner failed to do. (Docket entry #15.)

a copy of a July 23, 2007 Order of the Immigration Judge ordering Petitioner's removal to the Cayman Islands. (Docket entry #17 Ex. A.)

Petitioner's requested relief is moot due to his release from BOP custody and subsequent deportation. Thus, the Court recommends that Respondents' Motion to Dismiss be granted, and that the case be dismissed, with prejudice.

III. Conclusion

IT IS THEREFORE RECOMMENDED THAT Respondents' Motion to Dismiss (docket entry #14) be GRANTED, and the case DISMISSED, WITH PREJUDICE.

Dated this 14th day of September, 2007.


UNITED STATES MAGISTRATE JUDGE